

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

J&J CLASS 1

Judge Patti B. Saris

**CLASS COUNSEL’S MOTION TO ADD CLASS ONE REPRESENTATIVE
FOR THE JOHNSON & JOHNSON DEFENDANTS**

Class Counsel respectfully move the Court for leave to add Mrs. Jimmie Austed as a Class 1 representative for the J&J Defendants. As grounds for the Motion, together with the accompanying Memorandum and Affidavit of John A. Macoretta (“Macoretta Affidavit”), Class Counsel state as follows:

1. On March 26, 2010, Don Haviland filed a Notice of Voluntary Dismissal, seeking to dismiss without prejudice the “individual claims” of both of the Class 1 representatives for the J&J Defendants. *See* Dkt. No. 7013.

2. On May 19, 2010, this Court entered Case Management Order No. 33, requiring, *inter alia*, Class Counsel to add a class representative by today. Class Counsel have secured a replacement Class 1 representative and wish to add Mrs. Austed so that the Class 1 Plaintiffs’ case against the J&J Defendants may proceed.

3. As set forth in the attached Macoretta Affidavit, Ms. Austed has been taking Remicade since approximately 2000. Mrs. Austed has been a Medicare Part B beneficiary during that time and has made percentage co-payments for her Remicade infusions. She has been advised of the status of the litigation and wishes to serve as a class representative.

4. **Certification.** Pursuant to Local Rule 7.1(a)(2), Class Counsel have consulted with counsel for J&J Defendants with respect to this Motion and, while the J&J Defendants oppose class certification, they currently take no position with respect to Ms. Austed pending discovery and a review of her suitability under the federal rules.

WHEREFORE Class Counsel respectfully request leave to add Mrs. Austed as a Class 1 representative for the J&J Defendants, and all other relief that this Court deems just and appropriate.

DATED: June 9, 2010

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Jennifer Fountain Connolly
Hagens Berman Sobol Shapiro LLP
1629 K Street NW, Suite 300
Washington, D.C. 20006
Telephone: (202) 355-6435
Facsimile: (202) 355-6455

Kenneth A. Wexler
Wexler Wallace LLP
55 W. Monroe, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Jeffrey Kodroff
John A. Macoretta
Spector, Roseman, Kodroff & Willis, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Marc H. Edelson
Hoffman & Edelson
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on June 9, 2010, I caused copies of **CLASS COUNSEL'S MOTION TO ADD CLASS ONE REPRESENTATIVE FOR THE JOHNSON & JOHNSON DEFENDANTS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman